

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8162 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANSUKHLAL KANJIBHAI POPAT

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YS LAKHANI for Petitioner

MR SC PATEL ADDL, GOVERNMENT PLEADER

for Respondent No. 1, 4

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CORAM: Mr.Justice H.R.Shelat

Date of Decision: 12th February, 1998

#### ORAL JUDGMENT

The petitioner, who is detained under the order of detention dated 1st October 1997, passed by the District Magistrate, Jamnagar, invoking powers under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the 'Act') so as to prevent him from acting in any manner prejudicial to the maintenance of the supply of the essential commodities to the people, challenges the legality and validity of the order.

2. The facts which led the petitioner to prefer this petition may, in brief, be stated. The petitioner was granted the permit to run a Fair Price Shop at Amarapar village in Jam Jodhpur Taluka of Jamnagar District. The

petitioner was also granted a licence to distribute kerosene to the public. The licence granted was renewed from time to time, lastly it was renewed upto 31st December, 2000. The petitioner was bound to undergo necessary formalities as per rules governing the business and had to supply the essential commodities namely wheat, rice, sugar, edible oil and kerosene to the public periodically without any interruption. He was also under obligation to maintain required records and true and correct accounts. On 25th September, 1997, the District Supply Officer, Jamnagar alongwith his staff made inspection visits to the shop of the petitioner. During the course of inspection, the District Supply Officer could see that several malpractices were adopted by the petitioner, and the stock of essential commodities and kerosene was diverted elsewhere for profiteering motive. The accounts were also not written till that date, and whatever accounts found to have been written were also faulty. The Stock Register was also not written. The District Supply Officer then found that the petitioner had transacted qua the said stock in collusion with the others. The matter was then reported to the District Magistrate at Jamnagar who after further inquiry was satisfied to the effect that the petitioner was adopting several malpractices withholding or diverting the supply of essential commodities and had committed the breach of Term No.4 of the licence granted. With the result, for want of supply of required quota of essential commodities in the market, the people at large were experiencing several hardships. He then studying the materials and different circumstances formed the opinion that to have required supply of the essential commodities in the market, and check, the petitioner's black-economy, the only way out for him to pass the detention order and detain the petitioner in custody, because other remedial measures under general laws were sounding dull. He, therefore, invoking the powers under the Act, passed the impugned order which is called in question.

3. According to the petitioner, the copies of all the documents on which the detaining authority relies were not supplied to him, with the result, he could not study the same and decide whether to defend, and if yes, what defence was available to him. Consequently, his right to have effective representation was marred. It was made clear at the time of hearing that no doubt the copies of certain documentars/statements were supplied, but the copy of the licence, one of the terms of which is alleged to have been infarcted, was not given. The fact of non-supply of the copy of the licence is thus not assailed. On several other grounds, the order is

assailed, but when on this ground going to the root of the case, the whole petition is likely to be disposed of, I do not think it proper to deal with all those other grounds to which both agree. I will, therefore, confine myself to the only aforesaid ground so as to decide this petition.

4. Against the ground taken by the petitioner for assailing the order, it was on behalf of the opponents, Mr.S.R.Divetia, the learned AGP, has submitted that the petitioner, being the licence holder, was in possession of the licence, and was in know of all the terms and conditions thereof. It was, therefore, not incumbent upon the officer passing the impugned order to supply the copy. The copy of the document is to be supplied, provided the detenu is not in the know thereof or is not in possession of the said document. Mr. S.C.Patel, the APP for Union of India has supported Mr. S.R.Divetia.

5. Vide Article 22, protection against the arrest and detention has been given. As per that provision, the person who is arrested and detained in custody, has to be informed as soon as possible about the grounds of his arrest, and if that is not done, the right to have effective representation against the detention at the earliest opportunity is jeopardised, and therefore, the detention cannot be held legal, constitutional and valid. In view of this provision of the Constitution, the detaining authority is under an obligation to provide the copies of all the documents on which he relies without unjustly whiling away the time and thereby inform the detenu the grounds of the arrest so as to afford the detenu the earliest opportunity of making a representation against the order. If the copy is not supplied or the incomplete copy is supplied or the illegible copy is supplied, it would amount to non-supply of the copy which would be fatal to the authority passing the order of detention, because in that case the right to make representation is marred.

6. In this case, the copy of the licence is not supplied to the petitioner. It is alleged that the petitioner by adopting several malpractices committed the breach of Term No.4 of the licence, so as to have unjust enrichment or huge profit and exploit the people. He was, thereby, causing harm to the large good. When such case is advanced, the copy of the licence being the vital document ought to have been given. As it is not supplied, the petitioner's right to have effective representation is marred. The order in question, therefore, cannot be held legal and valid.

7. With regard to the second aspect of the contention, I may first refer the decision of the Supreme Court. In the case of M. Ahamedkutty Vs. Union of India and Another - (1990) 2 SCC 1. while dealing with the likewise question, it is observed as under :

" It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa Vs. State of Maharashtra, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir Vs. Delhi Administration, it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passu the grounds of

detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5)."

The above stated observation of the Supreme Court is a clear answer to the contention raised by Mr. Divetia, the learned AGP. Regardless of the fact that the detenu is having the document in his possession or he knows about the contents thereof, the document once relied upon in passing the order, the copy thereof has to be supplied because the detenu in custody would not be able to go to the place where the document in his possession is kept and study the same. In view of his such inability, it is held that the copy of the document, on which the authority passing the detention order relies upon has to be submitted regardless of the fact that the original document is in possession of the detenu or the detenu knows the contents thereof. The contention, therefore, gains no ground to stand upon.

8. In view of the aforesaid reasons, the right of the petitioner to make effective representation at the earliest is jeopardised. Consequently the order in question must be held unconstitutional, invalid and illegal.

9. In the result, the order of detention dt. 1st October, 1997 passed by the District Magistrate, Jamnagar, being unconstitutional and illegal, is hereby quashed and set aside and the petitioner is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute.

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(ccs)